MONTANA LEGISLATIVE HISTORY

Chapter 30 1999

Bill H _____ S 77 Original bill & history ✓C

H. Committee on Business & Labor		S. Committee on Labor & Employment Relations	
Hearing Date(s) 2/04	✓C	Hearing Date(s) 1/12	✓C
2-5	C no discussion in paper	1-21	C
	C		C
	C		C
Date Out	C		

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

LEGISLATIVE HISTORIES

The 1997 Montana Legislature dramatically changed the nature of legislative minutes. This altered format continues with the 1999 legislative minutes. The minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are fuller in content.

Exhibits, which include written statements, attendent information, roll call votes, roll call attendance, a list of those from the public who were present, and specific action taken on legislative bills, will be available only through the Historical Society Archives, 444-4774, and from a CD-ROM produced by the Legislative Services Division, 444-3064.

Just as in the 1997 legislative session, the 1999 House and Senate committee hearings were recorded. For information on accessing the tapes, or purchasing them, contact the Archives, 444-4774.

If you have concerns over the format of these legislative minutes, it is suggested that you contact your state legislators.

3/03	Hearing		
3/08	Tabled in Committee		
	Died in Standing Committee		

SB 76 Introduced by T. Beck *LC0231 Drafter: MacMaster*

Revise Provisions Relating to the Assignment of Monetary and Medical Support by Persons on Public Assistance to the Department of Public Health and Human Services;...

By Request of Department of Public Health and Human Services

12/18	Introduced		
1/04	1st Reading		
1/04	Referred to Public Health, Welfare and Safety		
1/08	Hearing		
1/14	Committee Executive Action--Bill Passed as Amended	10	1
1/14	Committee Report--Bill Passed as Amended		
1/16	2nd Reading Passed	38	9
1/18	3rd Reading Passed	39	10
	Transmitted to House		
1/19	Referred to Human Services		
1/22	Hearing		
2/03	Committee Executive Action--Bill Concurred	17	0
2/03	Committee Report--Bill Concurred		
2/06	2nd Reading Concurred	62	37
2/09	3rd Reading Concurred	73	27
	Returned to Senate		
2/09	Sent to Enrolling		
2/10	Returned from Enrolling		
2/11	Signed by President		
2/12	Signed by Speaker		
2/16	Transmitted to Governor		
2/18	Signed by Governor		
2/20	Chapter Number Assigned		
	Chapter Number 29		
	Effective Date: 2/18/1999 - Sections 1, 6 and 7		
	Effective Date: 7/01/1999 - Sections 4 and 5		
	Effective Date: 10/01/2000 - Sections 2 and 3		

SB 77 Introduced by Keenan *LC0229 Drafter: McClure*

Exclude from the Prevailing Wage Laws Contracts Entered into by the Department of Public Health and Human Services for the Provision of Human Services;...

By Request of Department of Public Health and Human Services

12/18	Introduced		
1/04	1st Reading		
1/04	Referred to Labor and Employment Relations		
1/04	Fiscal Note Requested		
1/04	Fiscal Note Received		
1/05	Fiscal Note Signed		
1/06	Fiscal Note Printed		
1/12	Hearing		
1/22	Committee Executive Action--Bill Passed	6	3

1/23	Committee Report--Bill Passed		
1/25	2nd Reading Passed	27	22
1/26	3rd Reading Passed	27	22
	Transmitted to House		
1/30	Referred to Business and Labor		
2/04	Hearing		
2/05	Committee Executive Action--Bill Concurred	10	8
2/06	Committee Report--Bill Concurred		
2/09	2nd Reading Concurred	59	40
2/10	3rd Reading Concurred	59	41
	Returned to Senate		
2/10	Sent to Enrolling		
2/11	Returned from Enrolling		
2/11	Signed by President		
2/12	Signed by Speaker		
2/16	Transmitted to Governor		
2/18	Signed by Governor		
2/20	Chapter Number Assigned		
	Chapter Number 30		
	Effective Date: 2/18/1999 - All Sections		

SB 78 Introduced by Stang *LC0005 Drafter: Kurtz*

Require the Transportation Commission to Establish Speed Transition Areas in Advance of Special Speed Zones That Include Urban Districts;...

12/18	Introduced		
1/04	1st Reading		
1/04	Referred to Highways and Transportation		
1/04	Fiscal Note Requested		
1/04	Fiscal Note Received		
1/05	Fiscal Note Signed		
1/06	Fiscal Note Printed		
1/14	Hearing		
1/22	Committee Executive Action--Bill Not Passed	4	7
1/22	Committee Report--Bill Not Passed		
1/22	Adverse Committee Report Adopted	37	13
1/23	Reconsidered Previous Action; Remains in Committee	35	11
1/23	Taken from Committee; Placed on 2nd Reading	46	0
1/25	2nd Reading Pass Motion Failed	19	31
1/25	2nd Reading Indefinitely Postponed	31	16

SB 79 Introduced by Swysgood, et al. *LC0671 Drafter: McClure*

Impose a 6-mill Levy for Support of the University System;...

12/18	Introduced		
1/04	1st Reading		
1/04	Referred to Education and Cultural Resources		
1/04	Fiscal Note Requested		
1/04	Fiscal Note Received		
1/05	Fiscal Note Signed		
1/06	Fiscal Note Printed		
1/11	Hearing		
1/14	Committee Executive Action--Bill Passed as Amended	9	0
1/14	Committee Report--Bill Passed as Amended		

SENATE BILL NO. 77

INTRODUCED BY KEENAN B

BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT EXCLUDING FROM THE PREVAILING WAGE LAWS CONTRACTS ENTERED INTO BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES FOR THE PROVISION OF HUMAN SERVICES; AMENDING SECTION 18-2-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 18-2-401, MCA, is amended to read:

"**18-2-401. Definitions.** Unless the context requires otherwise, in this part, the following definitions apply:

(1) A "bona fide resident of Montana" is a person who, at the time of employment and immediately prior to the time of employment, has lived in this state in a manner and for a time that is sufficient to clearly justify the conclusion that the person's past habitation in this state has been coupled with an intention to make it the person's home. Sojourners or persons who come to Montana solely in pursuance of any contract or agreement to perform labor may not be considered to be bona fide residents of Montana within the meaning and for the purpose of this part.

(2) "Commissioner" means the commissioner of labor and industry provided for in 2-15-1701.

(3) (a) "Construction services" means work performed by an individual in construction, heavy construction, highway construction, and remodeling work.

(b) The term does not include:

(i) engineering, superintendence, management, office, or clerical work on a public works contract; or

(ii) consulting contracts, contracts with commercial suppliers for goods and supplies, or contracts with professionals licensed under state law.

(4) "Department" means the department of labor and industry provided for in 2-15-1701.

(5) "District" means a prevailing wage rate district established as provided in 18-2-411.

INTRODUCED BILL 4

(6) "Heavy and highway construction wage rates" means wage rates, including fringe benefits for health and welfare and pension contributions, that meet the requirements of the Employee Retirement Income Security Act of 1974 and other bona fide programs approved by the United States department of labor and travel allowance that are determined and established statewide for heavy and highway construction projects, such as alteration or repair of roads, streets, highways, alleys, runways, trails, parking areas, or utility rights-of-way.

(7) "Nonconstruction services" means work performed by an individual, not including management, office, or clerical work, for:

(a) the maintenance of publicly owned buildings and facilities, including public highways, roads, streets, and alleys;

(b) custodial or security services for publicly owned buildings and facilities;

(c) grounds maintenance for publicly owned property;

(d) the operation of public drinking water supply, waste collection, and waste disposal systems;

(e) law enforcement, including janitors and prison guards;

(f) fire protection;

(g) public or school transportation driving;

(h) nursing, nurse's aid services, and medical laboratory technician services;

(i) material and mail handling;

(j) food service and cooking;

(k) motor vehicle and construction equipment repair and servicing; and

(l) appliance and office machine repair and servicing.

(8) (a) "Public works contract" means a contract for construction services or nonconstruction services let by the state, county, municipality, school district, or political subdivision in which the total cost of the contract is in excess of $25,000.

(b) The term does not include contracts entered into by the department of public health and human services for the provision of human services.

(9) (a) "Standard prevailing rate of wages" or "standard prevailing wage" means:

(i) the heavy and highway construction wage rates applicable to heavy and highway construction projects; or

(ii) those wages, other than heavy and highway construction wages, including fringe benefits for

health and welfare and pension contributions, that meet the requirements of the Employee Retirement Security Act of 1974 and other bona fide programs approved by the United States department of labor and travel allowance that are paid in the district by other contractors for work of a similar character performed in that district by each craft, classification, or type of worker needed to complete a contract under this part. In each district, the standard prevailing rate of wages must be computed from a weighted average wage rate based on all of the hours worked on work of a similar character performed in the district unless the survey of employers in the district does not generate sufficient data. If the survey produces insufficient data, the rate may be established by the use of other information or methods that the commissioner determines fairly establish the standard prevailing rate of wages. The commissioner shall establish by rule the method or methods by which the standard prevailing rate of wages is determined. The rules must establish a process for determining if there is insufficient data generated by a survey of employers in the district that requires the use of other methods of determining the standard prevailing rate of wages. The rules must identify the amount of data that constitutes insufficient data and require the commissioner of labor to use other methods of determining the standard prevailing rate of wages when insufficient data exists. The alternative methods of determining the prevailing rate of wages must provide for review and the incorporation of data from work of a similar character that is conducted as near as possible to the original district.

(b) When work of a similar character is not being performed in the district, the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions, that meets the requirements of the Employee Retirement Security Act of 1974 and other bona fide programs approved by the United States department of labor and the rate of travel allowance must be those rates established by collective bargaining agreements in effect in the district for each craft, classification, or type of worker needed to complete the contract.

(10) "Work of a similar character" means work on private or commercial projects as well as work on public projects."

NEW SECTION. **Section 2. Effective date -- applicability.** [This act] is effective on passage and approval and applies to contracts entered into on or after [the effective date of this act].

- END -

FISCAL NOTE

Bill #: SB0077 **Title: Prevailing Wage Law**

Primary Sponsor: **Bob Keenan** **Status: As Introduced**

Bob Keenan — Sponsor signature — Date

Dave Lewis — Dave Lewis, Budget Director — 1-4-99 Date

Fiscal Summary

	FY2000 Difference	FY2001 Difference
Expenditures:	$0	$0
Revenue:	$0	$0
Net Impact on General Fund Balance:	**$0**	**$0**

Yes	No		Yes	No	
	X	Significant Local Gov. Impact	X		Technical Concerns
	X	Included in the Executive Budget		X	Significant Long-Term Impacts

ASSUMPTIONS:

1. The bill clarifies the current contractual practice by the Department of Public Health and Human Services (DPHHS) regarding prevailing wage requirements.
2. The DPHHS does not currently include prevailing wage law requirements in its human services contracts.
3. Because this bill does not change the current practice of contracting for human services without prevailing wage requirements, there is no fiscal impact shown above
4. If the bill does not pass, the DPHHS may be subject to the requirements of the current prevailing wage law.
5. There will be a substantial increase in cost to DPHHS programs contracting for human services if the prevailing wage law applies to those human services contracts.
6. The Governor's Executive Budget was prepared with the assumption that human services contracts under DPHHS will continue under current practice (i.e. not subject to prevailing wage requirements).

TECHNICAL NOTES:

1. The Department of Public Health and Human Services (DPHHS) has been recently advised by legal counsel that many of its contracts may be subject to the requirements of the current prevailing wage law. Contracts for the delivery of "human services" have for many years been exempt from the requirements of the competitive

SB 77

bidding process. It was believed that these contracts were also exempt from the prevailing wage law. If the department were to require the payment of prevailing wages into its contracts for "human services", significant and substantial additional costs would be incurred. If the department fails to include the requirements of the prevailing wage into its contracts, the department is liable for these additional costs.

The department has formal contractual relationships with over 2500 entities and individuals. In addition, there are over 6000 medicaid providers of services under fee reimbursement arrangements that may be subject to the prevailing wage law. It is difficult for the department to determine if the particular services subject to the prevailing wage law exceed the $25,000 threshold. In most instances, the contracts include a combination of services; not all of these services are subject to the payment of prevailing wages. Thus, the dollar impact upon the department is not able to be estimated.

HB 592 SPONSOR: Hibbard, Chase SHORT TITLE: Revise employment laws
REFERRED ON: 02/23/1999 HEARD ON: 03/04/1999
EXECUTIVE ACTION: 03/10/1999 Bill Concurred as Amended -- VOTE: 8 - 1
FINAL DISPOSITION 04/23/1999 Chapter Number Assigned

HJ 16 SPONSOR: Ewer, David SHORT TITLE: To recognize, respect, and protect the right of workers to organize unions
REFERRED ON: 02/23/1999 HEARD ON: 03/23/1999
EXECUTIVE ACTION: 03/26/1999 Bill Concurred as Amended -- VOTE: 5 - 4
FINAL DISPOSITION 04/22/1999 (H) Died in Process

SB 21 SPONSOR: Shea, Debbie SHORT TITLE: Transfer occupational health administration to Department of Labor
BY REQUEST OF: Department Of Labor And Industry
REFERRED ON: 12/22/1998 HEARD ON: 01/12/1999
EXECUTIVE ACTION: 01/15/1999 Bill Passed -- VOTE: 7 - 0
FINAL DISPOSITION 02/20/1999 Chapter Number Assigned

SB 67 SPONSOR: Mahlum, Dale SHORT TITLE: Clarify marital status for employment discrimination purposes
REFERRED ON: 01/04/1999 HEARD ON: 01/12/1999
EXECUTIVE ACTION: 01/22/1999 Bill Passed as Amended -- VOTE: 7 - 2
FINAL DISPOSITION 04/22/1999 (H) Died in Standing Committee

SB 68 SPONSOR: Mahlum, Dale SHORT TITLE: Revise certain statutes relating to the State Compensation Insurance Fund
BY REQUEST OF: State Compensation Insurance Fund
REFERRED ON: 01/07/1999 HEARD ON: 01/19/1999
EXECUTIVE ACTION: 01/22/1999 Bill Passed as Amended -- VOTE: 9 - 0
FINAL DISPOSITION 04/22/1999 Chapter Number Assigned

SB 77 SPONSOR: Keenan, Bob SHORT TITLE: Revise applicability of prevailing wage on competitive bid public contracts
BY REQUEST OF: Department Of Public Health And Human Services
REFERRED ON: 01/04/1999 HEARD ON: 01/12/1999
EXECUTIVE ACTION: 01/22/1999 Bill Passed -- VOTE: 6 - 3
FINAL DISPOSITION 02/20/1999 Chapter Number Assigned

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

Call to Order: By **Chairman Tom Keating**, on January 12, 1999 at 3:00 P.M., in Room 413/415 Capitol.

ROLL CALL

Members Present:

Sen. Tom Keating, Chairman (R)
Sen. Fred Thomas, Vice Chairman (R)
Sen. Dale Berry (R)
Sen. Alvin Ellis (R)
Sen. Bob Keenan (R)
Sen. Walter McNutt (R)
Sen. Bill Wilson (D)
Sen. Vicki Cocchiarella (D)
Sen. Sue Bartlett (D)

Members Excused: None.

Members Absent: None.

Staff Present: Eddye McClure, Legislative Branch
Gilda Clancy, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 67, SB 77, SB 21
1/5/99

Executive Action: None

HEARING ON SB 67

Sponsor: **SEN. DALE MAHLUM, SD 35, Missoula**

dealt with more swiftly in the same department rather than being transferred and equipment can be shared to the mutual benefit of both safety and health specialists and the industrial hygienists. **EXHIBIT(4)**

Joseph Liuzza, Certified Industrial Hygienist, Safety Bureau, Department of Labor, urged the committee's support of this bill.

Opponents: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

SEN. SHEA closed stating the long-term impact of this bill will be more coordinated enforcement of safety and health in the workplace for Montana employees. It makes sense to have one department administrating it.

HEARING ON SB 77

Sponsor: **SEN. BOB KEENAN, SD 38, Bigfork**

Proponents: **Laurie Eckanger, Department of Public Health & Human Services**
Rose Hughes, Montana Health Care Association
Jim Ahrens, Montana Hospital Association
Chris Volinkaty, Executive Director, Developmental Center, Missoula, Montana

Opponents: **Jerry Driscoll, Representing Self**

{Tape : 1; Side : A; Approx. Time Counter : 36 - 42}

Opening Statement by Sponsor:

SEN. BOB KEENAN, SD 38, Bigfork, stated SB 77 addresses an issue that if not taken care of could cost a lot of money and become a detriment to the clients of the Department of Public Health & Human Services. The Finance and Claims Committee is dealing with this situation in the correct manner at the subcommittee manner.

Proponents:

Laurie Eckanger, Director, Department of Public Health & Human Services, handed out her testimony and a section of the Montana Procurement Act. **EXHIBIT(5),EXHIBIT(6)**

{Tape : 1; Side : B; Approx. Time Counter : 43 - 60, Comments: Tape turned to Side B near the end of Laurie Eckanger's testimony}

Rose Hughes, Montana Health Care Association, stated that two-thirds of their patients are on Medicaid. They have no say about what price the state pays for nursing home services. The legislature, through the appropriations process, allocates an amount of money through nursing home services for Medicaid recipients and the state agency distributes that money through a formula to the nursing facilities. However, they cannot determine prevailing wage, therefore, need an increase in their reimbursement to cover services. They support SB 77.

Jim Ahrens, President, Montana Hospital Association, said for the reasons already mentioned, they are in support of the bill.

Chris Volinkaty, Executive Direction, Developmental Center, Missoula, Montana, explained they serve children and families in the southern counties of western Montana with developmental disabilities. They want to go on record for supporting this bill. Their employees are definitely underpaid. They have a large turn-over and this is a big concern to them. If this language is not cleaned up, it will cause them to cut services and lay people off.

Opponents:

Jerry Driscoll, Representing Self, said that last session they greatly reduced the occupations that prevailing wage was initiated for. Law used to say that if government contracts out any service and the contract is assessed for $25,000, prevailing wage must be paid. He said this bill will make legal what the Department has already been doing for at least 30 years. He did not want people thinking everyone was for this bill.

Questions from Committee Members and Responses:

SEN. BARTLETT asked Laurie Eckanger to explain the prevailing rate for some of the occupations the Health Department is concerned about is and the rate being paid for personal care attendants.

Laurie Eckanger answered they have a list of prevailing wage for each of the occupations and each of the different programs tried to compare them. It was very difficult. Medicaid health care providers are billed for procedures, so they are not able to determine whether a nurse or a nurses aide is providing the procedure. Ms. Eckinger passed the question on to Mike Hanshew.

Mike Hanshew, Administrator of the Long-Care Division, Department of Health, said one example is that they have prevailing wage rates that range from $8.19 to $7.38 in the 10 districts. Some of the work they have done with the local senior centers' cooks pays $6.50 per hour. The difference is between regions. The concern is in the Americans' Act program for the states. The problem they have with how to apply this bill is what category of workers it would apply to and what kinds of contracts.

SEN. BARTLETT asked if we have this many employers paying those rates why that is not affected by prevailing wage.

John Andrew, Department of Labor & Industry, said he is not involved in the rate-setting methodology and does not believe there is anyone present who could answer that question. He will follow-up on it and give the specifics to **SEN. BARTLETT.**

SEN. THOMAS asked Jerry Driscoll that since he mentioned current law is amended and that he had referred to services under the prevailing wage law, if that had to do with the Attorney General Ruling by Attorney General Greeley, just before he left office.

Jerry Driscoll answered that is correct.

SEN. THOMAS asked if he ruled on 'any' service.

Jerry Driscoll said he ruled on what the definition of a service is and his ruling is the same as a law until challenged by a court.

SEN. THOMAS asked if it was derived out of construction services.

Jerry Driscoll answered he didn't know.

SEN. THOMAS asked in Mr. Driscoll's estimation, would he find anything in general that would exempt the Department of Health & Human Services from complying with it.

Jerry Driscoll answered he thinks they should comply with the law.

Closing by Sponsor:

SEN. KEENAN closed by stating he has spent a lot of time traveling around to the 'care providers' and the pay scale for the providers should be taken care of through the process of the budget.

SENATE LABOR & EMP
EXHIBIT NO. 5
DATE 1-12-99
BILL NO. SB 77

18-4-122. Purpose. The underlying purposes and policies of this chapter are to:

(1) simplify, clarify, and modernize the law governing procurement by the state of Montana;

(2) permit the continued development of procurement policies and practices;

(3) make as consistent as possible the procurement laws among the various jurisdictions;

(4) provide for increased public confidence in the procedures followed in public procurement;

(5) ensure the fair and equitable treatment of all persons who deal with the procurement system of the state;

(6) provide increased economy in state procurement activities and maximize to the fullest extent practicable the purchasing value of public funds of the state;

(7) foster effective, broad-based competition within the free enterprise system;

(8) provide safeguards for the maintenance of a procurement system of quality and integrity; and

(9) provide the exclusive remedies for unlawful bid solicitations or contract awards.

History: En. Sec. 2, Ch. 519, L. 1983; amd. Sec. 2, Ch. 443, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 443 inserted (9) relating to exclusive remedies for unlawful bid solicitations and contract awards; and made minor changes in style. Amendment effective April 30, 1997.

Retroactive Applicability: Section 23, Ch. 443, L. 1997, provided: "[Sections 2 and 10] [18-4-122 and 18-4-242] and the repeal of 18-4-131 apply retroactively, within the meaning of 1-2-109, in the case of an unlawful solicitation for bid or unlawful award of a contract, to a claim, to a cause of action, or to a request for relief other than those authorized by [section 10] [18-4-242], unless a complaint was filed in district court prior to January 1, 1992."

18-4-123. Definitions. In this chapter, unless the context clearly requires otherwise or a different meaning is prescribed for a particular section, the following definitions apply:

(1) "Business" means a corporation, partnership, individual, sole proprietorship, joint-stock company, joint venture, or other private legal entity.

(2) "Change order" means a written order, signed by an authorized department representative, directing the contractor to make changes which the changes clause of the contract authorizes the department to order without the consent of the contractor.

(3) "Contract" means all types of state agreements, regardless of what they may be called, for the procurement or disposal of supplies or services.

(4) "Contract modification" means a written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of a contract accomplished by mutual action of the parties to the contract.

(5) "Contractor" means a person having a contract with a governmental body.

(6) "Data" means recorded information, regardless of form or characteristic.

(7) "Department" means the department of administration.

(8) "Designee" means an authorized representative of a person holding a superior position.

(9) "Director" means the director of the department of administration.

(10) "Employee" means an individual drawing a salary from a governmental body, whether elected or not, and any noncompensated individual performing personal services for a governmental body.

(11) "Governmental body" means a department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, or other entity, instrumentality, or official of the executive, legislative, or judicial branch of this state, including the board of regents and the Montana university system.

(12) "Grant" means the furnishing by the federal government of assistance, whether financial or otherwise, to a person or agency to support a program authorized by law. It does not include an award whose primary purpose is to procure an end product, whether in the form of supplies or services. A contract resulting from an award is not a grant but a procurement contract.

(13) "Person" means any business, individual, union, committee, club, other organization, or group of individuals.

(14) "Printing" means the reproduction of an image from a printing surface generally made by a contact impression that causes a transfer of ink or the reproduction of an impression by a photographic process and includes graphic arts, typesetting, binding, and other operations necessary to produce a finished printed product. Printing does not include rebinding or repair by a library or an office, department, board, or commission of books, journals, pamphlets, magazines, and literary articles held as a part of its library collection.

(15) "Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring any supplies or services. It also includes all functions that pertain to the obtaining of any supply or service, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

(16) "Procurement officer" means any person authorized to enter into and administer contracts and make written determinations with respect to contracts. The term also includes an authorized representative acting within the limits of the representative's authority.

(17) "Purchasing agency" means any governmental body, other than the department, that is authorized by this chapter or its implementing rules or by way of delegation from the director to enter into contracts.

(18) "Services" means the furnishing of labor, time, or effort by a contractor. The term does not include employment agreements or collective bargaining agreements, the provision of human services administered by the department of public health and human services, or services related to construction contracts.

(19) "Supplies" means all property except as otherwise provided by law, including but not limited to equipment, materials, printing, and commodities, and excluding land or any interest in land.

(20) "Using agency" means any governmental body of the state that uses any supplies or services procured under this chapter.

EXHIBIT 6
DATE 1-12-99
BILL NO. SB 77

TESTIMONY SUPPORTING SB77
Presented by Laurie Ekanger, Director
Department of Public Health & Human Services

Purpose: To clarify that prevailing wage provisions do not apply to Department of Public Health and Human Services (DPHHS) human services contracts.

Description of Bill: Section 1: page 2 line 26 adds this provision.
Section 2: effective on passage and approval.

Why: Prevailing wage has never applied to these contracts. MCA 18-4-123 (18) exempts these kinds of contracts from state procurement laws. However, legal staff have advised DPHHS that application of prevailing wage law is unclear because of changes made to the prevailing wage law by HB407 last session. Since prevailing wage laws are unrelated to state procurement laws, prevailing wage could currently be interpreted to apply to DPHHS human services contracts even though exempted from other requirements at 18-4-123, MCA.

Background: HB407 was result of work group convened by the Department of Labor and Industry to review and update the prevailing wage laws, including addressing an Attorney General's Opinion issued to the Department of Labor and Industry regarding prevailing wage. I was involved through with this work group as Commissioner of Labor and Industry until November 1996. I was not involved in developing the definition and list of "Nonconstruction services" in 18-2-401 (7) on page 2, line 8 of SB77. I do know that while I participated the work group did not envision expanding prevailing wage to include DPHHS human services contracts. I don't believe that HB407 ever envisioned this expansion. DPHHS was not consulted and was not even sent fiscal note request.

Why shouldn't prevailing wage apply?

A. Prevailing wage is complex process, modeled after the federal Davis-Bacon Act, developed to cover traditional trade occupations in construction contracts. Department of Labor & Industry periodically surveys employers and calculates prevailing wage for covered occupations for each of 10 state districts. Those salary rates are then published as rules. Public employers include the prevailing wage rates as part of the bid specifications for project.. Bidders use those salary rates to calculate bids. When contracts are awarded, they include the prevailing wage costs. The law provides the public employer with assurance that bidders are not inappropriately low balling bids at the expense of a trained and competent work force., or unfairly competing with Montana employers. Reading prevailing wage laws shows that the law clearly envision a competitive bid process.

B. DPHHS human services contracts are different: 1) They are exempt from state procurement competitive bidding laws and most are not competitively bid; 2) most reimburse specific procedures or services; 3) funding and rates paid for these services are established separate from the contract process by formulas or rules within appropriations set by legislature; 4)

current reimbursement doesn't fully cover costs for many services currently; 5) skills and training of many of these occupations (such as nurses and nurse aids) are licensed and regulated by others, 6) many providers are small nonprofit community based corporations.

Impact on Medicaid:

As of 5/97, Montana had 8,200 enrolled Medicaid providers. State Medicaid rates average about 65% of charges now. Many providers serve Medicaid people as a community service. If DPHHS requires Medicaid providers to be aware of and comply with prevailing wage laws, for which rates would NOT be adjusted, many providers may choose simply not to participate in the Medicaid program. Additionally, the Medicaid billing system is a procedure code format used by Medicare and private insurance -- there is no way to determine if the procedure were performed by a nurse or a physician if it is within the scope of each license.

For nursing homes, Medicaid pays approximately 60% of all Montana nursing homes costs. Again, funding is appropriated by the Legislature biennially and would not be adjusted for prevailing wage changes. Nursing homes would have to absorbed any cost increase. Impact on each nursing home would vary based on the which of 10 districts it resided in.

Impact on Other Human Services
The DPHHS has approximately 2500 contracts. This includes county and tribal public health offices, group homes for the developmentally disabled, personal care attendants for seniors and the disabled, meals on wheels and transportation programs through Area Agencies on Aging, child care providers. These staff wear many hats. Record keeping to account for meal preparation and transportation and resulting wage variations would need to be accounted for in 30 minute increments and could be hard on small nonprofit corporations.

Again, most of these contracts are not awarded through a competitive bid process, so prevailing wage costs/adjustments cannot be built into the contract award process. Also, since they are not competitively bid, the prevailing wage law objective to prevent unfair competitive advantages does not apply.

Wages and Provider Rates are important to us. Equitable salaries and rates are necessary for consumers to have 1) access to services and 2) quality services. Direct care provider salaries is a major budget initiative in the DPHHS budget request. HB2 is the appropriate vehicle to address wage issues for human services contracts.

Summary: Prevailing wage law was written for a different contracting environment from the one experienced by DPHHS. It was designed for the construction industry. It was not intended to apply to DPHHS human services contracts. SB77 clarifies this intent. **Please support SB77.**

FOR MORE INFORMATION, call: Laurie Ekanger, Mike Hanshew or Russ Cater at 444-5622.

MONTANA SENATE
1999 LEGISLATURE
LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL DATE 1-12-99

NAME	PRESENT	ABSENT	EXCUSED
SEN. SUE BARTLETT	✓		
SEN. DALE BERRY	✓		
SEN. VICKI COCCHIARELLA	✓		
SEN. ALVIN A. ELLIS, JR.	✓		
SEN. BOB KEENAN	✓		
SEN. WALT MC NUTT	✓		
SEN. BILL WILSON	✓		
SEN. FRED THOMAS, VICE CHAIRMAN	✓		
SEN. TOM KEATING, CHAIRMAN	✓		

DATE 1-12-99

SENATE COMMITTEE ON Labor & Employment

BILLS BEING HEARD TODAY: SB21, SB67, SB77

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Oppose
Jim Nys	S.H.R.M.	SB67		✓
Sandra Hare	Self	SB67		✓
Mike Hawshead	DPHHS	SB77	✓	
Rose Hughes	MT Health Care Assn	SB77	✓	
Gail V. Hewitt	A A U W	SB67		✓
[illegible]	CMS	SB67		✓
Brian Cameron	CMS	SB67		
Laurie Ekanger	DPHHS	SB77	✓	
Al Smith	MTHA	SB67	~~✓~~	~~X~~ ONSE
Kate Cholewa	MT Women's Lobby	SB67		X
Jess Uhlinkamp	CDC — DD	SB77	✓	
Jack Copps	HRC	SB67	Info	-
Liz Pratt	Self	SB67		X
Amy Park	Self	SB67		X

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

DATE 1-12-99

SENATE COMMITTEE ON Labor & Employment

BILLS BEING HEARD TODAY: SB 21, SB 67, SB 77

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Oppose
DAVID ARONOFSKY	UNIVERSITY SYSTEM	67		
JOHN MALONEY	DLI	SB21	X	
JOSEPH LIUZZA	DLI	SB21	X	
Jerry Keck	DLI	SB21	X	
Tom Livers	DEQ	SB21	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

DATE 1-12-99

SENATE COMMITTEE ON Labor & Employment

BILLS BEING HEARD TODAY: SB21, SB67, SB77

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
Jerry Smith	Self	SB77		X

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

Call to Order: By **CHAIRMAN TOM KEATING**, on January 21, 1999 at 3:00 P.M., in Room 413/415 Capitol.

ROLL CALL

Members Present:

Sen. Tom Keating, Chairman (R)
Sen. Fred Thomas, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Dale Berry (R)
Sen. Vicki Cocchiarella (D)
Sen. Alvin Ellis (R)
Sen. Bob Keenan (R)
Sen. Walter McNutt (R)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Gilda Clancy, Committee Secretary
Eddye McClure, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Executive Action: SB 77, SB 67, SB 68

EXECUTIVE ACTION ON SB 77

Motion: **SEN. KEENAN** moved that **SB 77 DO PASS.**

Discussion:

SEN. SUE BARTLETT stated this is the bill in which she asked the Department of Labor to provide the Committee with how prevailing wages are set. She said John Andrews had some information with him that would help the Committee understand the process in setting prevailing wages, especially regarding those employers who have people working for them in similar types of occupations. The process for setting prevailing wages includes surveying private employers throughout the state who are in similar business and ask for their wage rates for those. The private sector employers can, then, establish what the wage rate is, but they have to participate in the survey. The second point is that is appears the Department of Public Health & Human Services deluded themselves in believing the law did not apply to them, and they chose to ignore it. At a time the legislative session is concerned about jobs and income to the extent this session is concerned about those issues, giving permission to the Department of Public Health & Human Service through their service providers to pay wages lower than the wages to prevail seems to her bad public policy. **EXHIBIT(1)**

SEN. BARTLETT explained she felt the material in this exhibit is pertinent, not only to this bill, but to other bills as well.

CHAIRMAN KEATING asked **SEN. BARTLETT** if there were things that related directly to Health & Human Services, and that they ignored those things and no one objected to it.

SEN. BARTLETT answered by stating that the information is about the process the Department of Labor & Industry uses to set prevailing wages to extent that the wage rates would be for the type of services the Department of Health is concerned about in this bill. She said in the testimony on the bill, the Director of Health & Human Services said this law had never applied to them and there is nothing she knows of in state law or court decisions that would have ever exempted this department from the prevailing wage law, so the conclusion she is led to believe is that they chose to ignore this law.

CHAIRMAN KEATING asked **SEN. BARTLETT** why, in her estimation, are they bringing it in now.

SEN. BARTLETT responded she believes they got nervous that someone might point out and challenge them on the fact they were not performing to the law. Now they are seeking to be exempt from that law.

CHAIRMAN KEATING stated the mission in Committee is to determine whether they wish to allow the Department of Health & Human Services to be exempt from prevailing wage laws. Evidently, this would not change what they have been doing already nor would it change what the Department of Labor has not been doing.

SEN. BARTLETT responded that is correct.

SEN. KEENAN said he understands **SEN. BARTLETT'S** concerns, however, his concern is there was an Attorney General's opinion which impacted this law. There was a Committee who worked on this situation before HB 407 at the last session became a factor in this situation. Exempting the Department of Health & Human Services and their contractors was an oversight that needed to be fixed. We fund these contracts, for instance in nursing homes approximately 60% of nursing home costs are funded with Medicaid and funds are appropriated by the legislature on a biennium basis. Without more confusion with more money into those contracts, then nursing homes are going to have to absorb these costs. The impact of this will vary depending upon the location of these nursing homes. His concern is that we will lose contractors and services to people if this prevailing wage is implemented in this area. He said he is willing to withdraw his motion to give the Committee more time to study the material they received today and to get better prepared. He is willing to go forth with it if the Committee would like to do that, either way.

SEN. THOMAS stated he didn't believe there was any particular rush on this and appreciated **SEN. KEENAN'S** willingness to withdraw.

CHAIRMAN KEATING said he didn't have the desire to postpone it, but will recede to the desires of the Committee. Some of the providers have a great desire for increase in the provider rate and are pleading for a provider rate increase. They realize that if their contracts are subject to prevailing wage laws, then there will not be any contracts because Medicaid is limited by a federal design. If they want to do the work and are subject to

prevailing wage there won't be enough money in the budget and, as **SEN. KEENAN** has mentioned, the providers won't be there because there won't be any contracts, so there won't be any services for those people who need that Medicaid service. That is the purpose of this bill. **REP. EWER** had pointed out, this was an oversight from a bill from last session and this should be corrected. He stated if the hearing is bad, the presenter will lose the bill, then after the fact we hear more testimony.

SEN. BARTLETT stated she doesn't believe delaying action will change the vote in the Committee, however, she does want to be clear that these self same providers in all likelihood, have the opportunity to participate by submitting their wage rates to the Department of Labor & Industry in the survey to help establish what the prevailing wage for those occupations would be set at. If they chose not to participate, they have only themselves to blame. You cannot get a prevailing wage if the employers don't participate by submitting wages for different occupations in their workforce. She thinks this is important enough and asked during the hearing if the Department would get us information.

CHAIRMAN KEATING asked **SEN. KEENAN** if he would like to withdraw his motion.

SEN. KEENAN said he didn't think so. He was reading through Laurie Eckanger's testimony for this bill and she was the Commissioner of the Department of Labor until November, 1996. She participated with this group as the Director of the Department of Labor. This working group did not consult the Department of Health & Human Services and assumed this was not going to be a problem. This was an oversight. He has decided to go with the vote.

Vote: Motion **carried 6-3 with SEN. BARTLETT, SEN. COCCHIARELLA, AND SEN. WILSON voting no.**

{Tape : 1; Side : A; Approx. Time Counter : 26 - 39; Comments : THE COMMITTEE RECESSED FOR 37 MINUTES, FROM 3:24 P.M. UNTIL 4:02 P.M.}

EXHIBIT 1
DATE 1-21-99
BILL NO. SB77

Prevailing Wage Rate Setting

Setting Prevailing Wage Rates:

Prevailing wage rates are set using a combination of an employer survey and collective bargaining agreements. Most of the nonconstruction services rates are calculated from survey data, because not many of the occupations are covered by collective bargaining agreements.

Before the survey is sent, data sources from the Department of Labor and Industry are used to find industries that typically employ occupations that are common to prevailing wage. After the industries are found, employers are selected to receive the survey based on their Standard Industrial Classification (SIC) from the Unemployment Insurance Tax File. The industry classification describes their primary business but is not indicative of all work the company may perform.

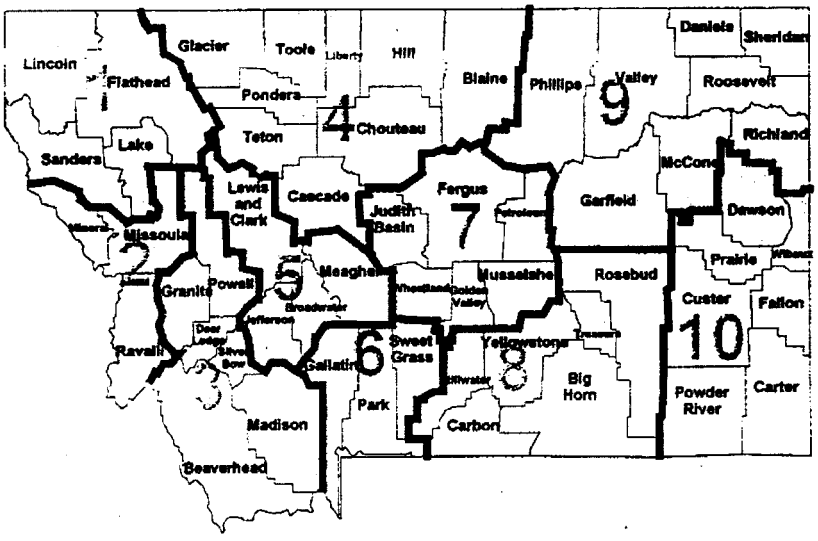
Wage rates for the July 1, 1997 services prevailing wage rates were derived from surveys sent to all employers in the following industries:

SIC	Title
0781	Landscape counseling and planning
0782	Lawn and garden services
0851	Forestry services
1442	Construction sand and gravel
4953	Refuse systems
4959	Sanitary services, nec
5044	Office equipment
5045	Computers, peripherals, and software
5084	Industrial machinery and equipment
5149	Froceries and related products, nec (wholesale)
5153	Grain and field beans (wholesale)
5172	Petroleum products, nec (wholesale)
5181	Beer and ale (wholesale)
5191	Farm supplies (wholesale)
5541	Gasoline service stations
5722	Household appliance stores
5734	Computer and software stores
5999	Miscellaneous retail stores, nec
7217	Carpet and upholstery cleaning
7349	Building maintenance services, nec
7378	Computer maintenance and repair
7381	Detective and armored car services

7538 General automotive repair shops
7539 Automotive repair shops, nec
7629 Electrical repair shops, nec
8051 Skilled nursing facilities
8062 General medical and surgical hospitals
8211 Elementary and secondary schools
9199 General government, nec

The prevailing wage survey is sent to private sector employers who work in industries that may employ people in occupations that relate to either building construction or nonconstruction services work. In addition to private sector employers, the nonconstruction services survey includes local government services, including educational services, and state government.

Montana is divided into 10 districts for prevailing wage purposes to provide more localized wage rates. The districts are composed of groups of counties.



The prevailing wage survey is voluntary, so the rates are dependent on receiving adequate quality data to use for rate setting. Employers are generally given two chances to respond to the survey.

Employers are asked to provide information on:

the district where their employees performed work
occupations their employees worked in
the wage rate employees were paid
number of hours employees worked
and fringe benefits paid directly or indirectly to employees.

Rate Calculation Process:

After survey data is received, it is checked to find missing fields, such as district, hours worked, and wage rate. Employers are contacted to correct missing, incomplete, or questionable data.

The prevailing wage law requires that rates be an average of workers' hourly wage weighted by hours worked (MCA 18-2-401 (7)(a)(ii)). This allows the rates to be representative of wages that are actually being paid in a particular district.

For example, rates are calculated in the following manner:

	Wage	# Hours for District	Wage X Hours
Bus Driver	$ 7.00	5,000	35,000
	$ 8.00	10,000	80,000
	$10.00	20,000	200,000
		35,000	315,000

Weighted average = total wage X hours divided by total # hours

315,000 / 35,000 = $9.00 prevailing wage

After the wage rates are calculated, they are analyzed to determine if there are enough hours submitted by district to set a district rate. If there are not, collective bargaining agreements are used to set rates.

If there are no collective bargaining agreements, a "contiguous districts" rate is calculated. A contiguous district rate is calculated by totaling data for all surrounding districts and calculating a weighted average on that total. If there is not enough data to set a rate in this manner, a statewide rate is set.

See attachment "Prevailing Wage Calculation" for more information.

Fringe benefits are set in basically the same manner as the wage rates. They include benefits for:

health and welfare, or health insurance
pension
vacation
and training.

Vacation benefits are usually included in the prevailing wage rate. It does not have to be included in the total wage and fringe benefit package unless the employer is signatory to a collective bargaining agreement that specifically states otherwise.

See attachment"Prevailing Wage Fringe Benefit Calculation" for more information.

July 1, 1997 Services Rates for Cooks:

Rates for cooks in eastern Montana (Districts 9 and 10) were derived mostly from data returned by nursing facilities, hospitals, and schools. Rates were calculated as follows:

District 9

Total hours reported for cooks: 62,588
Total hours X wages reported: 482,723.76
Weighted average wage = 482,723.76 / 62,588 = $7.71

To calculate a fringe benefit, the fringe benefit has to have at least 50% of the total hours reported for the occupation.

50% total hours: 31,294

Fringe benefit	Hours	Fringe set
Health & welfare	37,004	1.28
Pension	29,936	0.49 S (statewide rate)
Vacation	54,496	0.47
Training	1,560	0.00

District 10

Total hours reported for cooks: 43,573
Total hours X wages reported: 330,584.65
Weighted average wage = 330,584.65 / 43,573 = $7.59

To calculate a fringe benefit, the fringe benefit has to have at least 50% of the total hours reported for the occupation.

50% total hours: 21,787

Fringe benefit	Hours	Fringe set
Health & welfare	28,832	1.18
Pension	26,643	0.39
Vacation	42,655	0.44
Training	0	0.00

Preliminary/Final Rates:

When preliminary rates are calculated, a public hearing must be held to present the proposed rates to the public and allow for comments on the rates. Interested parties are notified in time to allow for comments. Interested parties may be added to the mailing list for prevailing wage upon request to the Department.

All comments from the public hearing and comment period are reviewed and responded to in writing. The rates are reviewed, amended, and finalized at this time. Final rates are then published, usually to become effective July 1 of the year they are set.

Response Rate:

The survey is sent to a universe (or all) of the employers classified in the industries selected. The survey is also voluntary, so some employers may choose not to respond.

Since the occupations covered by prevailing wage are very specific, some of the employers surveyed may not have employees working in those capacities. Some are also owners, who are excluded from prevailing wage calculation. We ask that they return the survey and indicate that they had no employees.

For the July 1, 1997 nonconstruction services rates, approximately 2,800 surveys were mailed. Approximately 1,000 surveys were returned. Of the returned surveys, approximately 550 had usable data, and approximately 450 had no employees.

We don't know if the remaining employers chose not to contribute their data, or if they had no employees.

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MONTANA SENATE
1999 LEGISLATURE
LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL DATE 1-21-99

NAME	PRESENT	ABSENT	EXCUSED
SEN. SUE BARTLETT	✓		
SEN. DALE BERRY	✓		
SEN. VICKI COCCHIARELLA	✓		
SEN. ALVIN A. ELLIS, JR.	✓		
SEN. BOB KEENAN	✓		
SEN. WALT MC NUTT	✓		
SEN. BILL WILSON	✓		
SEN. FRED THOMAS, VICE CHAIRMAN	✓		
SEN. TOM KEATING, CHAIRMAN	✓		

SENATE STANDING COMMITTEE REPORT

January 22, 1999

Mr. President:

We, your committee on **Labor and Employment Relations** report that **Senate Bill 77** (first reading copy -- white) **do pass.**

Signed: _____
Senator Tom Keating, Chair

- END -

Committee Vote:
Yes 6, No 3.

170909SC.sjo

MONTANA SENATE
1999 LEGISLATURE
LABOR AND EMPLOYMENT RELATIONS COMMITTEE
ROLL CALL VOTE

DATE 1-21-99 BILL NO. SB 77 NUMBER 1

MOTION: "Do Pass"

NAME	AYE	NO
SEN. SUE BARTLETT		✓
SEN. DALE BERRY	✓	
SEN. VICKI COCCHIARELLA		✓
SEN. ALVIN A. ELLIS, JR.	✓	
SEN. BOB KEENAN	✓	
SEN. WALT MC NUTT	✓	
SEN. BILL WILSON		✓
SEN. FRED THOMAS, VICE CHAIRMAN	✓	
SEN. TOM KEATING, CHAIRMAN	✓	

LEGISLATIVE TAPE LOG

COMMITTEE: Labor

DATE: 1-21-99

MINUTES	CONTENT NOTES
3:00	Meeting Called To Order
3:04	Executive Action SB77
3:24	Committee Recessed
3:50	Executive Action SB67
4:02	Executive Action SB68
4:15	Meeting Adjourned

SB 27 SPONSOR: Hertel, John SHORT TITLE: Revise telemarketing registration and fraud prevention act
REFERRED ON: 02/16/1999 HEARD ON: 03/05/1999
EXECUTIVE ACTION: 03/08/1999 Bill Concurred as Amended -- VOTE: 15 - 2
FINAL DISPOSITION 04/20/1999 Chapter Number Assigned

SB 51 SPONSOR: Keating, Tom SHORT TITLE: Repeal preconstruction requirements for condos and Commerce's enforcement role
BY REQUEST OF: Department Of Commerce
REFERRED ON: 01/13/1999 HEARD ON: 01/22/1999
EXECUTIVE ACTION: 01/22/1999 Bill Concurred -- VOTE: 18 - 0
FINAL DISPOSITION 02/17/1999 Chapter Number Assigned

SB 67 SPONSOR: Mahlum, Dale SHORT TITLE: Clarify marital status for employment discrimination purposes
REFERRED ON: 02/16/1999 HEARD ON: 03/09/1999
TABLED ON: 03/09/1999
FINAL DISPOSITION 04/22/1999 (H) Died in Standing Committee

SB 68 SPONSOR: Mahlum, Dale SHORT TITLE: Revise certain statutes relating to the State Compensation Insurance Fund
BY REQUEST OF: State Compensation Insurance Fund
REFERRED ON: 02/16/1999 HEARD ON: 03/04/1999
EXECUTIVE ACTION: 03/04/1999 Bill Concurred -- VOTE: 16 - 0
FINAL DISPOSITION 04/22/1999 Chapter Number Assigned

SB 77 SPONSOR: Keenan, Bob SHORT TITLE: Revise applicability of prevailing wage on competitive bid public contracts
BY REQUEST OF: Department Of Public Health And Human Services
REFERRED ON: 01/30/1999 HEARD ON: 02/04/1999
EXECUTIVE ACTION: 02/05/1999 Bill Concurred -- VOTE: 10 - 8
FINAL DISPOSITION 02/20/1999 Chapter Number Assigned

SB 90 SPONSOR: Stang, Spook SHORT TITLE: Amend the Veterans' Public Employment Preference Law
BY REQUEST OF: Joint Interim Subcommittee On Veterans' Needs
REFERRED ON: 02/16/1999 HEARD ON: 03/03/1999
EXECUTIVE ACTION: 03/03/1999 Bill Concurred as Amended -- VOTE: 15 - 0
FINAL DISPOSITION 03/25/1999 Chapter Number Assigned

AUGUST 2000

THE FOLLOWING MINUTES WERE REPORTED BY THE HISTORICAL SOCIETY ARCHIVES AS BEING ERASED FROM THE TAPES AND ARE NO LONGER AVAILABLE FROM ANY SOURCE.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN BRUCE SIMON**, on February 4, 1999 at 8:00 A.M., in Room 104 Capitol.

ROLL CALL

Members Present:

Rep. Bruce Simon, Chairman (R)
Rep. Bob Pavlovich, Vice Chairman (D)
Rep. Paul Sliter, Vice Chairman (R)
Rep. Joe Barnett (R)
Rep. Rod Bitney (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Roy Brown (R)
Rep. David Ewer (D)
Rep. Carol C. Juneau (D)
Rep. Billie Krenzler (D)
Rep. Bob Lawson (R)
Rep. Gay Ann Masolo (R)
Rep. Gary Matthews (D)
Rep. Joe McKenney (R)
Rep. Carolyn Squires (D)
Rep. Jay Stovall (R)
Rep. Cliff Trexler (R)
Rep. Carley Tuss (D)

Members Excused: None.

Members Absent: None.

Staff Present: Stephen Maly, Legislative Branch
Pati O'Reilly, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 77, HB 448, HB 442, HB 461,, 1/29/1999
Executive Action: HB 416

HEARING ON SB 77

Opening Statement by Sponsor: Sen Keenan introduced SB 77
{Tape : 1; Side : A; Approx. Time Counter : 0 - 51}

Proponents' Testimony: Laurie Ekanger, Dir of Health and Human Services EXHIBIT(2)
{Tape : 1; Side : A; Approx. Time Counter : 51 - 169}

Rose Hughes, Ex. Dir. MT Health Care Assn
{Tape : 1; Side : A; Approx. Time Counter : 169 - 222}

Rep. Simons
{Tape : 1; Side : A; Approx. Time Counter : 222 - 241}

Chris Valinkesy, Health care developmental disabilities
{Tape : 1; Side : A; Approx. Time Counter : 241 - 278}

Opponents' Testimony: Rep. Ewer
{Tape : 1; Side : A; Approx. Time Counter : 278 - 373}

Gene Fenderson, MT Joint Heavy and Hiway Assn
{Tape : 1; Side : A; Approx. Time Counter : 373 - 500}

Darel Holzer, AFL-CIO
{Tape : 1; Side : B; Approx. Time Counter : 0 - 61}

Questions from Committee Members and Responses: Rep. Simon, Ewer, Bookout, Squires, Tuss, Krenzler, Juneau and Brown questions witnesses.
{Tape : 1; Side : B; Approx. Time Counter : 61 - 500}

Closing by Sponsor: Senator Keenan closed SB 77
{Tape : 2; Side : A; Approx. Time Counter : 0 - 49}

HEARING ON HB 448

Opening Statement by Sponsor: Rep. Ewer, HD 53 introduced HB 448
{Tape : 2; Side : A; Approx. Time Counter : 49 - 100}

Proponents' Testimony: Gary Wolfe, Treasure State Acres res.
{Tape : 2; Side : A; Approx. Time Counter : 100 - 144}

HOUSE OF REPRESENTATIVES

BUSINESS AND LABOR COMMITTEE

ROLL CALL DATE 2/4/99

NAME	PRESENT	ABSENT	EXCUSED
Chairman Bruce Simon	X		
Rep. Paul Sliter	X		
Rep. Bob Pavlovich	X		
Rep. Joe Barnett	X		
Rep. Rod Bitney	X		
Rep. Sylvia Bookout-Reineke	X		
Rep. Roy Brown	X		
Rep. David Ewer	X		
Rep. Billie Krenzler	X		
Rep. Bob Lawson	X		
Rep. Gay Ann Masolo	X		
Rep. Gary Matthews	X		
Rep. Joe McKenney	X		
Rep. Carolyn Squires	X		
Rep. Jay Stovall	X		
Rep. Carley Tuss	X		
Rep. Carol Juneau	X		
Rep. Cliff Trexler	X		

EXHIBIT 2
DATE 2/4/99

TESTIMONY SUPPORTING SB77 ~~HB~~ SB 77
Presented by Laurie Ekanger, Director
Department of Public Health & Human Services

Purpose: To clarify that prevailing wage provisions do not apply to Department of Public Health and Human Services (DPHHS) human services contracts.

Description of Bill: Section 1: page 2 line 26 adds this provision.
Section 2: effective on passage and approval.

Why: Prevailing wage has never applied to these contracts. MCA 18-4-123 (18) exempts these kinds of contracts from state procurement laws. However, legal staff have advised DPHHS that application of prevailing wage law is unclear because of changes made to the prevailing wage law by HB407 last session. Since prevailing wage laws are unrelated to state procurement laws, prevailing wage could currently be interpreted to apply to DPHHS human services contracts even though exempted from other requirements at 18-4-123, MCA.

Background: HB407 was result of work group convened by the Department of Labor and Industry to review and update the prevailing wage laws, including addressing an Attorney General's Opinion issued to the Department of Labor and Industry regarding prevailing wage. I was involved through with this work group as Commissioner of Labor and Industry until November 1996. I was not involved in developing the definition and list of "Nonconstruction services" in 18-2-401 (7) on page 2, line 8 of SB77. I do know that while I participated the work group did not envision expanding prevailing wage to include DPHHS human services contracts. I don't believe that HB407 ever envisioned this expansion. DPHHS was not consulted and was not even sent fiscal note request.

Why shouldn't prevailing wage apply?

A. Prevailing wage is complex process, modeled after the federal Davis-Bacon Act, developed to cover traditional trade occupations in construction contracts. Department of Labor & Industry periodically surveys employers and calculates prevailing wage for covered occupations for each of 10 state districts. Those salary rates are then published as rules. Public employers include the prevailing wage rates as part of the bid specifications for project.. Bidders use those salary rates to calculate bids. When contracts are awarded, they include the prevailing wage costs. The law provides the public employer with assurance that bidders are not inappropriately low balling bids at the expense of a trained and competent work force., or unfairly competing with Montana employers. Reading prevailing wage laws shows that the law clearly envision a competitive bid process.

B. DPHHS human services contracts are different: 1) They are exempt from state procurement competitive bidding laws and most are not competitively bid; 2) most reimburse specific procedures or services; 3) funding and rates paid for these services are established separate from the contract process by formulas or rules within appropriations set by legislature; 4)

current reimbursement doesn't fully cover costs for many services currently; 5) skills and training of many of these occupations (such as nurses and nurse aids) are licensed and regulated by others, 6) many providers are small nonprofit community based corporations.

Impact on Medicaid:

As of 5/97, Montana had 8,200 enrolled Medicaid providers. State Medicaid rates average about 65% of charges now. Many providers serve Medicaid people as a community service. If DPHHS requires Medicaid providers to be aware of and comply with prevailing wage laws, for which rates would NOT be adjusted, many providers may choose simply not to participate in the Medicaid program. Additionally, the Medicaid billing system is a procedure code format used by Medicare and private insurance -- there is no way to determine if the procedure were performed by a nurse or a physician if it is within the scope of each license.

For nursing homes, Medicaid pays approximately 60% of all Montana nursing homes costs. Again, funding is appropriated by the Legislature biennially and would not be adjusted for prevailing wage changes. Nursing homes would have to absorbed any cost increase. Impact on each nursing home would vary based on the which of 10 districts it resided in.

Impact on Other Human Services
The DPHHS has approximately 2500 contracts. This includes county and tribal public health offices, group homes for the developmentally disabled, personal care attendants for seniors and the disabled, meals on wheels and transportation programs through Area Agencies on Aging, child care providers. These staff wear many hats. Record keeping to account for meal preparation and transportation and resulting wage variations would need to be accounted for in 30 minute increments and could be hard on small nonprofit corporations.

Again, most of these contracts are not awarded through a competitive bid process, so prevailing wage costs/adjustments cannot be built into the contract award process. Also, since they are not competitively bid, the prevailing wage law objective to prevent unfair competitive advantages does not apply.

Wages and Provider Rates are important to us. Equitable salaries and rates are necessary for consumers to have 1) access to services and 2) quality services. Direct care provider salaries is a major budget initiative in the DPHHS budget request. HB2 is the appropriate vehicle to address wage issues for human services contracts.

Summary: Prevailing wage law was written for a different contracting environment from the one experienced by DPHHS. It was designed for the construction industry. It was not intended to apply to DPHHS human services contracts. SB77 clarifies this intent. **Please support SB77.**

FOR MORE INFORMATION, call: Laurie Ekanger, Mike Hanshew or Russ Cater at 444-5622.

18-4-122. Purpose. The underlying purposes and policies of this chapter are to:

(1) simplify, clarify, and modernize the law governing procurement by the state of Montana;

(2) permit the continued development of procurement policies and practices;

(3) make as consistent as possible the procurement laws among the various jurisdictions;

(4) provide for increased public confidence in the procedures followed in public procurement;

(5) ensure the fair and equitable treatment of all persons who deal with the procurement system of the state;

(6) provide increased economy in state procurement activities and maximize to the fullest extent practicable the purchasing value of public funds of the state;

(7) foster effective, broad-based competition within the free enterprise system;

(8) provide safeguards for the maintenance of a procurement system of quality and integrity; and

(9) provide the exclusive remedies for unlawful bid solicitations or contract awards.

History: En. Sec. 2, Ch. 519, L. 1983; amd. Sec. 2, Ch. 443, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 443 inserted (9) relating to exclusive remedies for unlawful bid solicitations and contract awards; and made minor changes in style. Amendment effective April 30, 1997.

Retroactive Applicability: Section 23, Ch. 443, L. 1997, provided: "[Sections 2 and 10] [18-4-122 and 18-4-242] and the repeal of 18-4-131 apply retroactively, within the meaning of 1-2-109, in the case of an unlawful solicitation for bid or unlawful award of a contract, to a claim, to a cause of action, or to a request for relief other than those authorized by [section 10] [18-4-242], unless a complaint was filed in district court prior to January 1, 1992."

18-4-123. Definitions. In this chapter, unless the context clearly requires otherwise or a different meaning is prescribed for a particular section, the following definitions apply:

(1) "Business" means a corporation, partnership, individual, sole proprietorship, joint-stock company, joint venture, or other private legal entity.

(2) "Change order" means a written order, signed by an authorized department representative, directing the contractor to make changes which the changes clause of the contract authorizes the department to order without the consent of the contractor.

(3) "Contract" means all types of state agreements, regardless of what they may be called, for the procurement or disposal of supplies or services.

(4) "Contract modification" means a written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of a contract accomplished by mutual action of the parties to the contract.

(5) "Contractor" means a person having a contract with a governmental body.

(6) "Data" means recorded information, regardless of form or characteristic.

(7) "Department" means the department of administration.

(8) "Designee" means an authorized representative of a person holding a superior position.

(9) "Director" means the director of the department of administration.

(10) "Employee" means an individual drawing a salary from a governmental body, whether elected or not, and any noncompensated individual performing personal services for a governmental body.

(11) "Governmental body" means a department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, or other entity, instrumentality, or official of the executive, legislative, or judicial branch of this state, including the board of regents and the Montana university system.

(12) "Grant" means the furnishing by the federal government of assistance, whether financial or otherwise, to a person or agency to support a program authorized by law. It does not include an award whose primary purpose is to procure an end product, whether in the form of supplies or services. A contract resulting from an award is not a grant but a procurement contract.

(13) "Person" means any business, individual, union, committee, club, other organization, or group of individuals.

(14) "Printing" means the reproduction of an image from a printing surface generally made by a contact impression that causes a transfer of ink or the reproduction of an impression by a photographic process and includes graphic arts, typesetting, binding, and other operations necessary to produce a finished printed product. Printing does not include rebinding or repair by a library or an office, department, board, or commission of books, journals, pamphlets, magazines, and literary articles held as a part of its library collection.

(15) "Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring any supplies or services. It also includes all functions that pertain to the obtaining of any supply or service, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

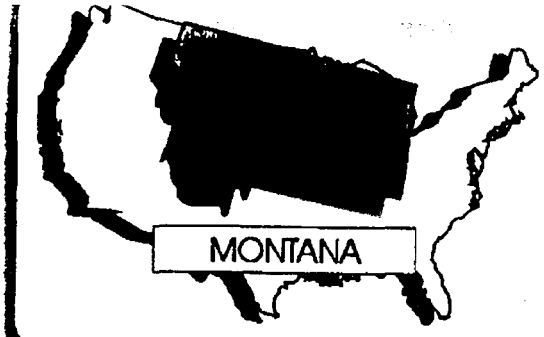
(16) "Procurement officer" means any person authorized to enter into and administer contracts and make written determinations with respect to contracts. The term also includes an authorized representative acting within the limits of the representative's authority.

(17) "Purchasing agency" means any governmental body, other than the department, that is authorized by this chapter or its implementing rules or by way of delegation from the director to enter into contracts.

(18) "Services" means the furnishing of labor, time, or effort by a contractor. The term does not include employment agreements or collective bargaining agreements, the provision of human services administered by the department of public health and human services, or services related to construction contracts.

(19) "Supplies" means all property except as otherwise provided by law, including but not limited to equipment, materials, printing, and commodities, and excluding land or any interest in land.

(20) "Using agency" means any governmental body of the state that uses any supplies or services procured under this chapter.



Medicaid Program

As of May of 1997, services to our clients were provided by over 8,000 active providers and 4 participating HMO's.

The vast majority of services are reimbursed on a "fee for service" basis with the remainder paid for by an HMO and reimbursed to the HMO on a capitated basis.

The department fiscal agent for the Medicaid program is Consultec Inc. In 1997, Consultec processed 3,385,951 claims. Claims are paid every two weeks with an average of 7 days from claims receipt to processing. Approximately, 70% of all claims are submitted and processed electronically.

Type of Service	Number of Providers
Physician	3055
Dentist	464
Pharmacist	399
Hospital	534
EPSDT	159
Podiatry	43
Physical Therapy	221
Speech Therapy	131
Audiology	39
Hearing Aids	46
Occupational Therapy	115
Home Health	68
Personal Care	45
Dialysis	17
Private Nursing	34
Clinics	50
Psychological Services	168
Durable Medical Equipment	451
Optometric/Optician	242
Transportation	57
Ambulance	159
Nursing Homes	115
HCBS	440
Case Management	46
Rehabilitation	31
Nutrition	24
Inpatient Psychiatric	14
ICF-MR	3
Laboratory & X-ray	77
Social Worker	521
Denturist	6
Mid-Level Practitioners	307
Chiropractor	68
Hospice	15
RHC	27
FQHC	13
HMO	4
Total (5/31/97)	8247

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MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER

DATE 2-4-99

BILL NO. SB 77 SPONSOR(S) _____

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE CIRCLE	NAME	ADDRESS	REPRESENTING
(P) O I	Chris Volinkaty	1-214 Fort MSLA, MT 59804	DDBAC
P (O) I	Darrell Holzer	Helena	MT. ST. AFL-CIO
P (O) I	Eugene Fenderson	Helena	MSHHC
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PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

LEGISLATIVE TAPE LOG

COMMITTEE: Nat Res & Labor

DATE: 2/4/99

MINUTES		CONTENT NOTES
111	Tape 1 B SB 77	Brabant questions Mr Anderson. Squires - Mike Hayshoe Senn questions Senator
233		Senn questions Hayshoe. " " B. Vaughn Jennings " Eldridge
348		Jennings " Brown " " Senn " Eldridge
400	Tape 2A SB 77	Senator Jennings closed SB 77.
49	SB 448	Rep Ewer. HB 53 intro SB 448.
100		Gary Wolfe. Treasure State Cards resident proponent
144		Steve Stirling - Helena Valley residence; proponent
228		Kathy Collins - Helena residence. proponent. Ex 3
255		Nancy Bix - Helena residence proponent
273		Rep Ahrens. HB 51 Proponent

LEGISLATIVE TAPE LOG

COMMITTEE: Ag Env & Labor

DATE: 2/4/99

MINUTES		CONTENT NOTES
318	Tape 2a DB448	Laurie Koubek - Chester Coalition of Mt. - Env Ins proponent
363		Betty Haddell - Mt Assn of Churches proponent.
394		Ellen Ingstad "Work Together with the Future" proponent. EH4
466		Kate Kuntz - MTA opponent
66	Tape 2b DB448	Beck Miller - Yancey Ins Assn opponent.
104	Informative	Dave Hoodjord, Dept of Environmental Protection
121		Back out question Hoodjord. Ewer ~ ~ Ewer
249		Squires ~ ~ Pavlovich ~ ~ Juneau
268		Mackie questions Ewer Brown ~ ~ McKenney ~ ~
347		Cp Ewer closed DB448

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LEGISLATIVE TAPE LOG

COMMITTEE: Bus Econ & Labor

DATE: 2/4/99

MINUTES	CONTENT NOTES
	Tape 2b
	HB 442
422	Rep Stovall DD 14 introduces HB 442
467	Rep Keeper. DD 52 proponent
	Tape 3a
000	HB 442
	Todd Daniels - MT State Brewers Assn proponent.
43	Dennis Hemmer berger - Bldg Trades proponent.
68	Jim O'Leary - Little Town Brewery in Helena MT proponent
87	Brian Smith - Blackfoot Town Brewery - Helena proponent
98	Kyle Hager - MT Beer & Wine Wholesalers of MT proponent
119	Mark Staples - MT Farmers Union proponent.
147	Bob Stephens - MT Farm Bureau & MT Grain Growers Assn proponent
	no opponents
168	Some questions Stovall

LEGISLATIVE TAPE LOG

COMMITTEE: House Taxes & Labor

DATE: 2/4/99

MINUTES		CONTENT NOTES
	Tape 3A SB442	
200		Keeps questions Stovall Copyfolder - Daniels Stutz
259		Backout questions Oppicky. Jensen - Stovall.
298		Rep Stovall closed SB442 -
304	SB461	Rep Jensen, SB18 entitled SB ~~441~~ 461
461		Wayne Stanley - Chairman Board of Plumbers. Proponent.
	Tape 3B	
19		John Parker: Pres of NW Assn of Plumbers & Pipe Fitters Proponent.
41		Wm Halverson - Plumber & Fitter from Missoula Proponent.
60		Richard Zier - Electrician from Bldg Trades Proponent.
87		Wm Verrey - Business Mgr for electricians Proponent
89		Jack Peiffer - IBEW from Butte Proponent

LEGISLATIVE TAPE LOG

COMMITTEE: House Bus & Labor

DATE: 2/4/99

MINUTES	CONTENT NOTES
Tape 3-B HB 461	
83	Sage Henderson - NW Joint Energy & Energy Assn proponent
90	Gail Sweetgall - Montana Farmers Union proponent EX 5, 6, 7
105	Ruth Allen - IBEW - Helena MT proponent
130	Steve Meloy - Dir of Div of POL. proponent
134	Mike Foster - MT Contractors Assn opponent.
220 Informational	Jean McCall - City of Bzn opponent
277	Jim Brown - Bldg Code Div Dept of Commerce Informational
148	Fred Cobb - plumber from Helena proponent
472	Rep Answer questions Brown Mathews - Foss - Meloy
Tape 4A HB461 000	Foss / Meloy

Of 7

LEGISLATIVE TAPE LOG

COMMITTEE: House Bus & Labor

DATE: 2/4/99

Page 4a HB 461

MINUTES		CONTENT NOTES
05		Davlouck question Sessions
26	Ex Action	Rep Sessions closes HB 461
186	HB 416	Rep Sims moved do pass HB 416.
	Table unanimous	Sims yes, no amendments. Ex 8
316		Stephens moves to segregate 1 & 2
		Stephens withdraws motion
		Sims moves to Table HB 416
		Close & vote.

AUGUST 2000

THE FOLLOWING MINUTES WERE REPORTED BY THE HISTORICAL SOCIETY ARCHIVES AS BEING ERASED FROM THE TAPES AND ARE NO LONGER AVAILABLE FROM ANY SOURCE.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN BRUCE SIMON**, on February 5, 1999 at 8:00 A.M., in Room 104 Capitol.

ROLL CALL

Members Present:

Rep. Bruce Simon, Chairman (R)
Rep. Bob Pavlovich, Vice Chairman (D)
Rep. Paul Sliter, Vice Chairman (R)
Rep. Joe Barnett (R)
Rep. Rod Bitney (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Roy Brown (R)
Rep. David Ewer (D)
Rep. Carol C. Juneau (D)
Rep. Billie Krenzler (D)
Rep. Bob Lawson (R)
Rep. Gay Ann Masolo (R)
Rep. Gary Matthews (D)
Rep. Joe McKenney (R)
Rep. Carolyn Squires (D)
Rep. Jay Stovall (R)
Rep. Cliff Trexler (R)
Rep. Carley Tuss (D)

Members Excused: None.

Members Absent: None.

Staff Present: Stephen Maly, Legislative Branch
Pati O'Reilly, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HJR 15, HB 489, 2/3/1999
Executive Action: HB 353, SB 77, HB 442, HB 448, HB 400, HB 430, HB 428, HB 367, HB 368, HB 369, HB 370, HB 402, HB 396, HJR 15, HB 489

HOUSE OF REPRESENTATIVES

BUSINESS AND LABOR COMMITTEE

ROLL CALL DATE 2/5/99

NAME	PRESENT	ABSENT	EXCUSED
Chairman Bruce Simon	X		
Rep. Paul Sliter	X		
Rep. Bob Pavlovich	X		
Rep. Joe Barnett	X		
Rep. Rod Bitney	X		
Rep. Sylvia Bookout-Reineke	X		
Rep. Roy Brown	X		
Rep. David Ewer	X		
Rep. Billie Krenzler	X		
Rep. Bob Lawson	X		
Rep. Gay Ann Masolo	X		
Rep. Gary Matthews	X		
Rep. Joe McKenney	X		
Rep. Carolyn Squires	X		
Rep. Jay Stovall	X		
Rep. Carley Tuss	X		
Rep. Carol Juneau	X		
Rep. Cliff Trexler	X		

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE
BUSINESS AND LABOR COMMITTEE

DATE 2/5/99 BILL NO. SB 77 NUMBER

MOTION: Masolo moves do concur SB 77

10-8

NAME	AYE	NO
Rep. Paul Sliter	X	
Rep. Rod Bitney	X	
Rep. Sylvia Bookout-Reinicke		X
Rep. Roy Brown	X	
Rep. Bob Pavlovich		X
Rep. Joe Barnett	X	
Rep. Cliff Trexler	X	
Rep. Gary Matthews		X
Rep. Carol Juneau		X
Rep. David Ewer		X
Rep. Billie Krenzler		X
Rep. Bob Lawson	X	
Rep. Joe McKenny	X	
Rep. Carolyn Squires		X
Rep. Jay Stovall	X	
Rep. Gay Ann Masolo	X	
Rep. Carly Tuss		X
Rep. Bruce Simon	X	

HB265 Cable Wyatt. get new 353 off Table

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LEGISLATIVE TAPE LOG

COMMITTEE: Nat Res & Labor

DATE: 2/5/99

Page 1A

MINUTES		CONTENT NOTES
000	HB353 Off Table	HB 353 - Remove from Table 18-0
26	SB Do pass 10-8	SB 77 Do pass by Mosely Discussion -
100	HB442 do pass 17-1	Stovall move do pass HB 442 - Carried 17-1
108	HB448 as amended	Ewer HB 448 do pass
220	Table 11-7	Ewer moves to amend to new locations & previously approved locations.
297		Vote amendment 18-0
		Ewer do pass as amended.
		Ewer offers amendment 2 with HB amendment Ewer.
382	HB400	Ivey moves do pass HB400 Ivey moves amendment Ex 1
450		Vote Ivey amendment 18-0
000	Page 1B	Ivey do pass as amended Barrett moves to Table Barrett withdraws motion

LEGISLATIVE TAPE LOG

COMMITTEE: Nat Res & Labor

DATE: 2/5/99

MINUTES		CONTENT NOTES
	Tape 1B	
42	AB400 as amended	Meeves
		Ewell moves do pass as amended.
127		Roll call to Table AB 400
152	AB 430 as amended	Aguiar moves do pass AB 430.
		Moves amendments by Aguiar
		Vote amendments 18-0
		Aguiar do pass as amended.
205		Vote AB 430 as amended 18-0
213	AB 438 as amended	Bennett moved do pass AB 438.
		Breen repeat mendate
		Issue of fees amendment
240		Vote amendment 18-0
		Breakout amendment for vote 18-0
		Issue of fees amendment. 8:42
		with new amendment.
315		McKenzy moves to Table AB 438.

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LEGISLATIVE TAPE LOG

COMMITTEE: Ag Irr & Lbr

DATE: 2/5/99

MINUTES		CONTENT NOTES
	Tape 1B	
436	HB367 as amended	Ewer moves do pass HB367 as amended
		18-0
476	Tape 2a	Ewer moves do pass as amended
		Bitney moves to Table 367
69	368-369-370	Bitney moves to Table 368-369-370
		18-0
88	HB402	Devlaminck moves to Table HB402 Withdrew
102		~~Ewer moves do pass~~ Devlaminck moves Ewer moves do pass HB402 as amended 18-0
		Devlaminck moves to Table HB402 17-1 Ewer no
120	HB396 as amended	Marsh moves do pass HB396 as amended E&A
218		Vote amendments 18-0
		Marsh moves do pass as amended
	12-6	Vote - yes Ewer, Tuss, Lauzen Bengtson, Jensen, Haines

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LEGISLATIVE TAPE LOG

COMMITTEE: House Bus & Labor

DATE: 2/5/99

MINUTES	CONTENT NOTES
274 Tape 2A AB 489	Greg Hagen AM. 83 - AB 489
317 No proponents	Lance Melton - Mt School Boards opponent
363	Don Snyder Mt Public Asso opponent
382	Jerry Driscoll Bldg Const & Trades Council opponent
402	Ellen Donner - Mt League of Cities & Towns opponent
426	Ellen Judge AFL-CIO opponent
457	Jean Mercer - MEA & Mt Teachers opponent
476	Mark Staples
44 Tape 2B AB 489	Rep Wagner closed.
AJ 15	
60	Rep Harrell AM 16 entire AJ 15

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LEGISLATIVE TAPE LOG

COMMITTEE: House Bus & Lbr

DATE: 2/5/99

MINUTES	CONTENT NOTES
93 Tape 2 B	Rep Blair - Sponsor Presentation
178	Rep Rees & Rep G. Mills questions
198	Rep Newman. Sen Sponsor Sen M. Suspension.
251	No opponents questions
278	Rep Stovall moved. DP 15-
DP 15 8-0 Stovall	Rep Stovall dupes DP 15-
300 HB 489 Table 180	Speeches moves to Table HB 489 18-0

AN ACT EXCLUDING FROM THE PREVAILING WAGE LAWS CONTRACTS ENTERED INTO BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES FOR THE PROVISION OF HUMAN SERVICES; AMENDING SECTION 18-2-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 18-2-401, MCA, is amended to read:

"**18-2-401. Definitions.** Unless the context requires otherwise, in this part, the following definitions apply:

(1) A "bona fide resident of Montana" is a person who, at the time of employment and immediately prior to the time of employment, has lived in this state in a manner and for a time that is sufficient to clearly justify the conclusion that the person's past habitation in this state has been coupled with an intention to make it the person's home. Sojourners or persons who come to Montana solely in pursuance of any contract or agreement to perform labor may not be considered to be bona fide residents of Montana within the meaning and for the purpose of this part.

(2) "Commissioner" means the commissioner of labor and industry provided for in 2-15-1701.

(3) (a) "Construction services" means work performed by an individual in construction, heavy construction, highway construction, and remodeling work.

(b) The term does not include:

(i) engineering, superintendence, management, office, or clerical work on a public works contract; or

(ii) consulting contracts, contracts with commercial suppliers for goods and supplies, or contracts with professionals licensed under state law.

(4) "Department" means the department of labor and industry provided for in 2-15-1701.

(5) "District" means a prevailing wage rate district established as provided in 18-2-411.

(6) "Heavy and highway construction wage rates" means wage rates, including fringe benefits for health and welfare and pension contributions, that meet the requirements of the Employee Retirement Income Security Act of 1974 and other bona fide programs approved by the United States department of labor and travel allowance that are determined and established statewide for heavy and highway construction projects, such as alteration or repair of roads, streets, highways, alleys, runways, trails, parking areas, or utility rights-of-way.

(7) "Nonconstruction services" means work performed by an individual, not including management, office, or clerical work, for:

(a) the maintenance of publicly owned buildings and facilities, including public highways, roads, streets, and alleys;

(b) custodial or security services for publicly owned buildings and facilities;

(c) grounds maintenance for publicly owned property;

(d) the operation of public drinking water supply, waste collection, and waste disposal systems;

(e) law enforcement, including janitors and prison guards;

(f) fire protection;

(g) public or school transportation driving;

(h) nursing, nurse's aid services, and medical laboratory technician services;

(i) material and mail handling;

(j) food service and cooking;

(k) motor vehicle and construction equipment repair and servicing; and

(l) appliance and office machine repair and servicing.

(8) (a) "Public works contract" means a contract for construction services or nonconstruction services let by the state, county, municipality, school district, or political subdivision in which the total cost of the contract is in excess of $25,000.

(b) The term does not include contracts entered into by the department of public health and human services for the provision of human services.

(9) (a) "Standard prevailing rate of wages" or "standard prevailing wage" means:

(i) the heavy and highway construction wage rates applicable to heavy and highway construction projects; or

(ii) those wages, other than heavy and highway construction wages, including fringe benefits for health and welfare and pension contributions, that meet the requirements of the Employee Retirement Security Act of 1974 and other bona fide programs approved by the United States department of labor and travel allowance that are paid in the district by other contractors for work of a similar character performed in that district by each craft, classification, or type of worker needed to complete a contract under this part. In each district, the standard prevailing rate of wages must be computed from a weighted average wage rate based on all of the hours worked on work of a similar character performed in the district unless the survey of employers in the district does not generate sufficient data. If the survey produces insufficient data, the rate may be established by the use of other information or methods that the commissioner determines fairly establish the standard prevailing rate of wages. The commissioner shall establish by rule the method or methods by which the standard prevailing rate of wages is determined. The rules must establish a process for determining if there is insufficient data generated by a survey of employers in the district that requires the use of other methods of determining the standard prevailing rate of wages. The rules must identify the amount of data that constitutes insufficient data and require the commissioner of labor to use other methods of determining the standard prevailing rate of wages when insufficient data exists. The alternative methods of determining the prevailing rate of wages must provide for review and the incorporation of data from work of a similar character that is conducted as near as possible to the original district.

(b) When work of a similar character is not being performed in the district, the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions, that meets the requirements of the Employee Retirement Security Act of 1974 and other bona fide programs approved by the United States department of labor and the rate of travel allowance must be those rates established by collective bargaining agreements in effect in the district for each craft, classification, or type of worker needed to complete the contract.

(10) "Work of a similar character" means work on private or commercial projects as well as work on public projects."

Section 2. Effective date -- applicability. [This act] is effective on passage and approval and

applies to contracts entered into on or after [the effective date of this act].

- END -